IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 399 of 2004

PURANMAL
V/S
GANESH & ANR

Mr. RAKESH ARORA, for the appellant / petitioner

Date of Order : 30.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The plaintiff filed the suit for recovery of possession and permanent injunction against the defendant, pleading inter alia, that he has purchased the plot in question for a sum of Rs.20/-, in an open auction, and thereafter was granted Patta thereof on 22.6.63, and was given possession. It is then alleged, that proceedings under Sec. 145 Cr.P.C. were initiated, and the plot was attached on 9.7.77, and in that attachment also, possession was taken from the plaintiff. Those proceedings were ultimately dropped, and attachment was withdrawn, as it was found that there was no danger of breach of peace, and consequently, the SDM delivered the possession to the defendant, therefore, the suit for possession has been filed.

The defendant contested the suit, contending inter alia, that the plot was never put to auction, and that, at the time of attachment, it was in his possession, as it is his residential premises. It was also pleaded, that the market value of the plot is about Rs. 10,000/-.

The learned trial court found, that from the plaintiff's evidence itself, comprising of Sarpanch and other Panchs, it is clear that the procedure for grant of Patta was not followed, inasmuch as, neither any sale was proclaimed by beat of drum , nor any open auction was held.

Likewise, compliance of other procedural requirements, for grant of Patta, were also not believed by the trial court. Then considering the defendant's evidence that, the land was in his possession, it was held, that issue no.1 is in two parts, and since, even from the plaintiff's evidence, the part of plaintiff’s purchasing the land in open auction, from Gram Panchayat on 22.3.63 is not established, and regarding second part, the plaintiff has not led any evidence to show, that he was in possession of the land at the time when the land was attached, and thus, this issue was decided against the plaintiff, though it was observed, that no relief has been sought about the validity of the Patta, and no issue has been framed in this regard, however, since the plaintiff has failed to prove to have purchased the land in open auction, as pleaded in the plaint, issue was decided against the plaintiff.

Then deciding issue no.2, it was held, that in plaint, the plaintiff has alleged, that land was delivered to the defendant in proceeding under Sec. 145 Cr.P.C., while in evidence, he has denied this fact, and has pleaded, that he has filed the suit only for the part of land. Thus this issue was also decided against the plaintiff. Issue no.3 relating to the valuation of the property was decided in favour of the plaintiff, and thus the suit was dismissed.

The learned lower Appellate Court has found, that it is admitted position that plot was not put to open auction, and auction was not proclaimed by beat of drum. In that view of the matter, the finding of learned trial court was upheld, and regarding issue no.2 also, same was decided mainly on the basis of finding on issue no.1.

It is contended by learned counsel for the appellant, that since the Patta has not been cancelled, and the suit was filed only for recovery of possession, it was not open to the courts below to go into

the question as to the validity of the Patta, much less to dismiss the suit on that count, and therefor the judgments are bad.

Suffice it to say, that bare reading of the plaint, which was read to me by learned counsel for the appellant, shows, that plaintiff claimed his title only on the basis of having purchased the land in open auction, for which Patta was issued, and this was claimed to be basis of his title, for seeking possession of the land from the defendant, who is in possession, and to whom the possession was delivered consequent upon the withdrawal of attachment, as effected in the proceedings under Sec. 145 Cr.P.C.

In that view of the matter, when the plaintiff's witnesses themselves admit, that plot was never put to open auction, it cannot be said that plaintiff acquired any title. May be, that the piece of paper purporting to be Patta is there in favour of plaintiff, but then plaintiff rest pleased with that Patta. However, he cannot get the decree for possession from the defendant on that basis.

Thus, I do not find the appeal to be involving any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/